

Testimony in Support of SB149

Bill: Senate Bill No. 149
Sponsor: J. Brueggeman
Testimony on Behalf of: The City of Hamilton
Testimony by: Ross Miller, Lobbyist for The City of Hamilton
Date: January 28, 2009

The City of Hamilton strongly supports SB149. SB149 is an important step in addressing the problems municipal water suppliers face, where their water rights are "trimmed back" to only that portion of the right which has historically been put to use whenever a municipal water right goes through the change process. This "trimming back" by DNRC began in 2005 when DNRC implemented new rules whereby a Change in Appropriation of a municipal water right

**"cannot exceed or increase the flow rate
historically diverted under historic use, nor
exceed the historic volume consumptively used
under the existing use."**

ARM 36.12.1902(2) (emphasis added).

Such changes to municipal water rights are commonly needed, and are typically for the purposes of: (1) changing the Place of Use (boundary of water service area), which is the subject of SB149; or (2) changing the Point of Diversion (e.g., adding on another well to efficiently serve the expanded service area), which is an equally large problem, but not the subject of SB149.

This "trim back" of Pre-73 rights nullifies any protections of municipal water rights required of the Water Court under MCA 85-2-227(4), essentially nullifying the statute itself, and can result in a loss of any portion of Pre-1973 existing water rights that were put into use after 1973.

It must also be pointed out that under the language of SB149 a municipality would not be restricted to serving water only to that municipality under the provisions of this bill, but would also be allowed to expand its Place of Use to serve areas located outside the boundaries of the municipality, but still part of the same public water system.

For the reason stated above, the City of Hamilton supports SB149.